

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

CLERK'S MINUTES

Before the Honorable Martha Vázquez

Case No.: MC 12-23-MV

Date: April 24, 2012

Title: USA v. Gary P. Mares

Courtroom Clerk: Linda Romero

Court Reporter: Susan Sperry

Court in Session: 1:33 p.m.

Court in Recess: 1:41 p.m.

TOTAL TIME IN COURT = 8 minutes

TYPE OF PROCEEDING: Order to Show Cause Hearing

**COURT'S RULINGS AND/OR
DISPOSITION:** Court grants Petition to Enforce IRS Summons

**ORDER CONSISTENT WITH
COURT'S RULING TO BE
PREPARED BY:** Petitioner

INTERPRETER:

ATTORNEY(S) FOR PLAINTIFF:

ATTORNEY(S) FOR DEFENDANT:

Manuel Lucero

PROCEEDINGS:

1:33 p.m. Court in Session, Mr. Lucero states his appearance, introduces IRS Agent Rosemary Basile.

Court notes that the Respondent is not present.

Mr. Lucero states the attempts at service that have been made by the government, including by mail, 3 attempts by process servers, and the U.S. Marshal service.. They attempted to serve this Fifth Amended Order to Show Cause by posting on the garage door of the respondent's residence, by registered mail which was returned unclaimed, by Federal Express which was not accepted and by first class mail which was not returned.

Court inquires whether under Rule 1-004(F)(3) of the New Mexico Rules of Civil Procedure, the government attempted to serve the respondent at his place of employment or business.

Mr. Lucero responds that the government does not know if the respondent is employed, and that is some of the information being sought under the IRS Summons.

Court finds that the plaintiff IRS is not aware of any employment for the respondent, so that provision of Rule 1-004(F)(3) cannot be complied with and finds that the respondent is actively avoiding service of process. The Court finds that all other reasonable methods of service have been exhausted and approves the posting/ mailing method process that was used to attempt to serve the respondent. The Court notes that the process server has filed an affidavit stating that he has determined that the respondent has regularly been at the home and is evidently using his garage door to exit and enter his premises, that the process server posted the Order on the garage door where the respondent would see the Order and that the Order had later been removed.

The Court finds that these attempts satisfy the minimum due process requirements and grants the Petition for enforcement, finding that the government has made a prima facie showing of entitlement to enforcement of their Summons, that by actively avoiding service the respondent has waived his right to service and the Court has jurisdiction over Mr. Mares.

Court inquires whether the government has an Order for her signature. Government advises they will have one sent up this afternoon.

1:41 p.m. Court in recess.